

**Steven P. Jones, OSB #782628**  
sjones@keatingjones.com  
**Kirstin L. Abel, OSB #035046**  
kabel@keatingjones.com  
Keating Jones Hughes PC  
One SW Columbia, Suite 800  
Portland, OR 97258-2095  
Phone: (503) 222-9955  
Fax: (503) 796-0699  
Attorneys for Cascade Healthcare Community, Inc.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**EUGENE DIVISION**

MINNY FRANK,

Case No. 6:11-cv-06402-AA

Plaintiff,

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

v.

By Cascade Healthcare Community, Inc.

CASCADE HEALTHCARE COMMUNITY,  
INC. dba ST. CHARLES MEDICAL  
CENTER; MAGNUS LAKOVICS, MD;  
EDWARD PALMER, MD,

Defendants.

**INTRODUCTION**

Plaintiff brings this action alleging violations of the Americans with Disabilities Act and state law negligence and intentional infliction of emotional distress claims against defendant Cascade Healthcare Community, Inc., dba St. Charles Medical Center, (“defendant”) as well as its codefendant physicians. Plaintiff is not represented by counsel and is proceeding pro se. Plaintiff alleges that she has a history of mental illness. Her allegations stem from an incident where she was brought in to the hospital emergency department by the police, following a 911 call by her husband reporting that she was suicidal, intoxicated, and a danger to herself. Per

MEMORANDUM IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER - Page 1

Doc No. 325690

**KEATING JONES HUGHES P.C.**  
One Southwest Columbia, Suite 800  
Portland, Oregon 97258-2095  
(503) 222-9955

policy, plaintiff was required to wear scrubs while in Psychiatric Emergency Services (“PES”). Plaintiff refused to comply, was restrained, and placed in scrubs by psychiatric staff. Plaintiff’s claims stem from this act.

Beginning in April of 2012, plaintiff began an online “campaign” in this case accusing the hospital of racism, sexism, and discrimination based on mental illness. She made a video with these allegations and posted the video on YouTube. She also posted these allegations in blog posts on her own website, both of which were linked to through social media sites like Facebook and YouTube. In response to these defamatory statements, defense counsel drafted a cease and desist letter to plaintiff. (Decl. of Kirstin L. Abel, Exhibit 1.) Plaintiff responded by threatening further retaliation. (Decl. of Kirstin L. Abel, Exhibits 2 & 3.)

At this juncture, plaintiff has increased her online defamation campaign substantially. The following are merely a sample of the case-related postings plaintiff has made:

1. Mentally Ill Disabled Mother, Stripped Naked, And Molested by Male Staff at the Hospital ([http://www.youtube.com/watch?v=gy5bnY6\\_Nr0&feature=plcp](http://www.youtube.com/watch?v=gy5bnY6_Nr0&feature=plcp))
2. Is It Because I'm Black Or Mentally Ill? (<http://www.youtube.com/watch?feature=endscreen&NR=1&v=NsFr1spusi4>)
3. Bend, Oregon Hospital Takes Your Money For This Kind of Compassion? (<http://www.youtube.com/watch?v=iEFQ0EgIGPo&feature=youtu.be>)
4. <http://stcharlesmedical.com/>
5. Sometimes the N Word is Like A Silent Letter (<http://stcharlesmedical.com/sometimes-the-n-word-is-like-a-silent-letter/>)
6. I Would Rather Die Than Go Back To The Hospital (<http://whateverdiagnosis.org/i-would-rather-die-than-go-back-to-the-hospital/>)
7. Calling All Ex-Employees of St. Charles Health Systems (<http://whateverdiagnosis.org/calling-all-ex-employees-of-st-charles-health-systems/>)

A transcription of plaintiff’s statement in one of these videos is as follows:

“Okay. This video may piss a couple of people off. But it must be done. So, something horrible happened to me in Bend, OR, and I’m going to say it. I think St. Charles Medical Center, well, they are calling themselves St. Charles Health

MEMORANDUM IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER - Page 2

Doc No. 325690

KEATING JONES HUGHES P.C.  
One Southwest Columbia, Suite 800  
Portland, Oregon 97258-2095  
(503) 222-9955

System, in Bend, OR, hates black people. There I said it. So, strike 1. I am African American. Strike 2, I was diagnosed with bi-polar disorder. Strike 3, I am a mouthy, black, educated, bi-polar bitch. So, is it because I'm black, because that's just whack. And is it because I'm black and I was talking smack because that's still whack. Or is it because I'm mentally ill. Well that's still not chill and if you don't understand those expressions visit the urbandictionary.com and look it up but I don't really talk like this. It's just an example of a stereotype. I'm very educated and I intend to bring an important message to you about something that has touched my life and something that has touched possibly others' lives as well. Please stay tuned for a video about a hospital called St. Charles Medical System or St. Charles Health System in Bend, OR, Central Oregon. Thank you.

"Okay, so I came into the emergency room that evening and as we have already established I am: strike 1, African American in a 95% Caucasian town in Bend, OR. Strike 2, I was diagnosed with bi-polar disorder stigma. Strike 3, I am a mouthy, moody, bi-polar black girl. So, again, is it because I'm black or is it because I'm mentally ill that I was treated this way. Or, does St. Charles Health System just not like black people. Gotta wonder. So, just become someone is mouthy and a bitch and bi-polar does not give you the right to break the law."

(Is It Because I'm Black Or Mentally Ill?

(<http://www.youtube.com/watch?feature=endscreen&NR=1&v=NsFr1spusi4>)).

As shown above, plaintiff has actually gone so far as to register the domain name <http://stcharlesmedical.com> and launched it as a defamatory website to reach those seeking to contact the hospital. Similarly, she has been posting these videos and links on the Facebook pages for the hospital, Deschutes County, and other affiliated organizations.

What is more egregious, and violates the professional rules of the court, is that plaintiff has been improperly attempting to communicate with represented parties in this litigation. She has emailed these links to each member of defendant's board of directors. She also gives direct messages to each member in her video posted online. (Bend, Oregon Hospital Takes Your Money For This Kind of Compassion?

(<http://www.youtube.com/watch?v=iEFQ0EgIGPo&feature=youtu.be>)). This has gone so far as plaintiff posting these videos on the public Facebook walls of various board members in an attempt to defame them and negatively affect one member's political campaign. In addition,

plaintiff has made contact with individuals represented by counsel, including St. Charles Health System, CEO, James Daigle and St. Charles Medical Center Board Members, even after specifically being advised that all contact should be through counsel.

Plaintiff's actions in this case are causing irreparable harm to defendant and defendant asks the Court for an order enjoining further public statements on the case.

### **ARGUMENT**

Plaintiff's actions are improper for the following reasons:

#### **1) Improper contact with represented parties**

Because plaintiff is representing herself in this case, the same rules of professional conduct must apply to her as they would to retained counsel. Specifically, plaintiff's ex parte contact with employees, executives, and board members of defendant is improper under Oregon Rules of Professional Conduct 4.2. If plaintiff has a question or statement to make to a represented party she must communicate through that party's attorney. Defendant asks the Court for an order directing plaintiff to cease contacting all represented parties, either directly or indirectly via correspondence, Facebook, Twitter, or through the use of a third party agent carrying out her will.

#### **2) Tainting of possible jury pool**

Plaintiff's widespread media attack is in great danger of reaching and tainting any possible jury pool for this case. Trial court judges have discretion to issue contempt sanctions for parties who violate a gag order when there is a risk of contaminating the jury with inadmissible information. *See Ferguson v. Peacehealth*, 245 Or App 249, 251-52, 263 P.3d 1037 (2011). Plaintiff's attempt to defame defendant through as many communication channels as possible is jeopardizing defendant's right to an impartial and unbiased jury.

#### **3) Irreversible injury to reputation and goodwill**

The loss of intangible assets such as reputation and goodwill can constitute irreparable injury, as required to support an injunction. *United Healthcare Ins. Co. v. Advance PCS*, 316

F.3d 737, 741 (C.A.8 (Minn.), 2002). Plaintiff's untethered online "campaign" is clearly at risk of causing irreversible injury to the reputation and goodwill of the defendants. The courtroom will provide plaintiff with ample opportunity to air her claims and have a fact-finder determine the truth of her allegations.

**4) Health Insurance Portability and Accountability Act**

The Health Insurance Portability and Accountability Act (HIPAA) prevent defendants from responding and defending themselves from plaintiff's claims. This Federal statutory and regulatory scheme prevents covered entities, such as defendant, from disclosing the protected health information of a patient to third parties. Because plaintiff was a patient who received treatment at defendant hospital, defendant is restrained by HIPAA from defending itself in the public sphere with an accurate account of the treatment plaintiff received. It is unjust to allow plaintiff to continue her damaging online campaign against defendant in such a circumstance where defendant is unable to defend itself.

DATED this 16<sup>th</sup> day of July, 2012.

KEATING JONES HUGHES, P.C.

s/ Kirstin L. Abel

---

Kirstin L. Abel, OSB No. 035046  
503-222-9955

Attorneys for Cascade Healthcare Community, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER** on the following:

Minny Frank  
1803 Buttermilk Lane  
Arcata, CA 95521  
Phone: (707) 822-3844  
Fax: (240) 358-0424  
Plaintiff Pro Se

Via Electronic Court Service

Gordon L. Welborn  
Hart Wagner LLP  
439 SW Umatilla Avenue  
Redmond OR 97756  
Phone: (541) 548-6044  
Fax: (541) 548-6034  
Of Attorneys for Edward Palmer, MD

Via Electronic Court Service

by the method indicated above on said day.

DATED this 16<sup>th</sup> day of July, 2012.

KEATING JONES HUGHES, P.C.

s/ Kirstin L. Abel

---

Kirstin L. Abel, OSB No. 035046  
kabel@keatingjones.com, FAX 503-796-0699  
Of Attorneys for Cascade Healthcare Community, Inc.

Trial Attorney: Steven P. Jones, OSB No. 782628